

***United States Court of Appeals  
for the Second Circuit***



**JOINT APPENDIX**





# 76-7310

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

DONNA LYNCH, et al  
Plaintiff—Appellee

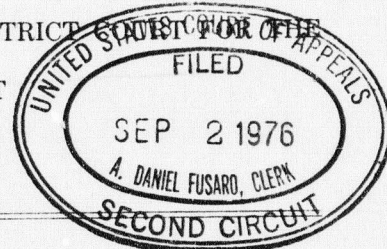
RUTHANN BIGELOW, GAIL HUNTLEY and  
LELAND YOUNG,  
Intervening Plaintiffs

v.

PAUL PHILBROOK, Commissioner of  
the Vermont Department of  
Social Welfare  
Defendant—Appellant

B

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF VERMONT  
Civil Action No. 75 - 37



JOINT APPENDIX

M. JEROME DIAMOND, Attorney General  
by DAVID H. GREENBERG  
Assistant Attorney General  
State Office Building  
Montpelier, Vermont 05602  
Counsel for Defendant - Appellant



PAGINATION AS IN ORIGINAL COPY

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02 07 75 3 444 1

inj. relief 1007

45 37

## PLAINTIFFS

## DEFENDANTS

LYNCH, DONNA

On her own behalf and on behalf  
of her minor child, and all  
others similarly situated

v.

PHILBROOK, PAUL,

Commissioner of the Vermont  
State Department of Social  
Welfare

GAIL MARIE HUNTLEY, Intervenor

RUTHANN BIGELOW,

LELAND YOUNG,

## CAUSE

Plaintiff claims certain regulation of State Dept. of Social Welfare are in conflict with the Social Security Act and are violative of the Equal Protection Clause of the 14th Amendment.

## ATTORNEYS

Stephen W. Kimbell, Esq. and  
William A. Dalton, Esq.  
Staff Attorneys  
Vermont Legal Aid, Inc.  
P. O. Box 562  
Burlington, VT 05401

David L. Kalib, Esq.  
Assistant Attorney General  
Department of Social Welfare  
4 East State Street  
Montpelier, VT 05602

1

☒ CHECK  
HERE  
IF CASE WAS  
FILED IN  
FORM A

## FILING FEES PAID

DATE	RECEIPT NUMBER	C.D. NUMBER
24-76	EX 5941 (M.B.) 85 CC	# 55

## STATISTICAL CARDS

CARD	DATE MAILED
JS-5	
JS-6	JUL 197



Feb.	7	1	Filed Motion for Permission to Proceed in Forma Pauperis & Affidavit
"	"	2	" Order--Pltf's may file Complaint without prepayment of fees.
"	"	3	" Mailed copy to attorney.
"	"	4	" Complaint, Request for Three Judge Court; Request for Class Action Status.
"	"		" Pltf's Memorandum in Support of the Granting of Temporary Reli
"	"		Issued Summons.
"	10		In Chambers before Judge Coffrin. Stephen W. Kimbell, Esq. for Pltf
"	"		David L. Kalib, Esq. for Deft.
"	"		Hearing on Pltf's Request for TRO.
"	"		Statements made to Court by Mr. Kimbell; followed by Mr. Kalib who
"	"		objects to the granting of TRO.
"	"		ORDERED: Welfare to pay amount Pltf. is allowed and entitled to.
"	11	5	Filed T. R. O. Mailed copy to attys.
"	20	6.	" Summons returned served.
Mar.	3	7.	Filed Notice of Appearance of David L. Kalib, Esq. for Deft.
"	"	8.	Filed Deft.'s Answer to Complaint.
"	21	9.	" Plaintiff-Intervenor Ruth Bigelow's Motion to Intervene, and
"	"		Memorandum in Support of Motion to Intervene.
"	25	10.	" Plaintiff's motion for class action determination.
"	"	11.	" Memorandum in support of motion for class action determinatio
Apr.	8	12	" Pltf.-Intervenor Huntley's Motion to Intervene.
"	"	13	" " " Memorandum in support of Motion to
"	"		Intervene.
"	14	14	Filed Plaintiff-Intervenor's Memorandum in Support of the granting
"	"		of Temporary Relief.
"	"		In open Court before Judge Holden. Stephen W. Kimbell, Esq., for
"	"		Plaintiff. Dean Pineles, Esq., for Defendant.
"	"		Hearing on Intervening Plaintiff's Motion for a TRO.
"	"		Statements made to Court by Mr. Kimbell who stipulates various
"	"		facts in the case as pertains to intervening Plaintiff Gail
"	"		Huntley.
"	"		Mr. Pineles makes statements to Court as to the agreed statement o
"	"		facts presented by Mr. Kimbell, who was in agreement, with on
"	"		exception.
"	"		Court makes inquiry of Mr. Pineles and Mr. Kimbell.
"	"		Gail Marie Huntley, sworn by Clerk, was examined by Mr. Kimbell.
"	"		Court makes inquiry of witness.
"	"		Mr. Pineles cross-examines witness.
"	"		Court makes further inquiry of witness.
"	"		Further statements made to Court by Mr. Kimbell, followed by Mr.
"	"		Pineles.
"	"		Taken under consideration.
"	"		At 11:40 A.M., in Chambers, attorneys present, it was
"	"		ORDERED: that Motion to Intervene is granted and the case continu
"	"		until April 16, 1975.
"	"	15	Filed Intervenor's Complaint - Class Action, Plaintiff-Intervenor
"	"		Gail Huntley.
"	"		Issued Summons.
"	15		Issued Temporary Restraining Order.

(Continued on next page)



DATE	NR.	PROCEEDINGS
1975		
Apr. 28	16	Filed Defendant's memorandum in opposition to plaintiffs' motion for class action determination.
" "	17	" Pltfs' Interrogatories and Request to Produce - Series I.
May. 1	18	" TRO returned served.
May 29	19.	Filed defendant's answers to plaintiffs' interrogatories. Series I
July 7		In Chambers before Judge Coffrin. Stephen W. Kimbell, Esq. for plaintiffs. Dean B. Pineles, Esq. for defendant.
" "		Hearing on Ruth Bigelow's motion to intervene. Objected to by Mr. Pineles. Statements made to Court by Mr. Kimbell.
" "		ORDERED: Motion granted - - if it is determined to have a different factual condition. This action could be separated from other plaintiffs within the case.
" "		Hearing on plaintiffs' request for Three Judge Court.
" "		Statements made to Court by Mr. Kimbell
" "		Decision reserved.
" "		Counsel are to file with the Court by August 18, 1975, a stipulation of agreement of facts.
" "		Plaintiffs are to file a memorandum by Sept. 22, 1975 and defendant a reply memorandum by Oct. 14, 1975.
" 8	20	Filed Intervenor's Complaint - Class Action -Plaintiff-Intervenor, Ruthann Bigelow.
Sept. 17		In Chambers before Judge Coffrin. Stephen W Kimbell, Esq. prese Court extended time for plaintiff to file memo to September 26, 1975; defendant has additional 3 weeks to file reply memo.
" 26	21	Filed Pltfs' Memorandum of Law.
" "	22	" Stipulation of Agreed Facts.
Oct. 14	23.	Filed Motion of Leland Young to Intervene as Party Plaintiff.
" "	24.	Filed Memorandum in Support of Motion to Intervene.
" "	25.	Filed Intervenor's Complaint - Class Action.
" 20		In open Court before Judge Coffrin, hearing on motion for TRO. Charles Hickey, Esq. for plaintiffs; David L. Kalib, Esq. and David Greenberg, Esq. for defendant.
" "		Leland Young, sworn by Clerk, was examined by Mr. Hickey.
" "		Upon consideration of Leland Young's motion to intervene as party plaintiff, it is
" "		Ordered: Motion granted.
" "		Decision reserved as to TRO; plaintiff to submit memo to Court by 10/22/75 and defendant to submit reply memo by 10/24/75.
" 22	26.	Filed plaintiffs' memorandum in support of plaintiff young's motion for TRO.
" 24	27	Filed Deft's Memorandum in opposition to Pltf. Young's Motion for TRO.



1975	NR.	PROCEEDINGS
Oct. 29	28	Filed Findings of Fact, Opinion and Order--Pltf's request for a TRO is denied. Mailed copy to attorneys.
" "	29	Filed Pltf's Motion for Summary Judgment.
" "	30	Filed Supplement to Pltf's Memorandum of Law.
Nov. 3	31	Filed Deft's Motions to Dismiss and Motion for Summary Judgment
" "	32	Filed Memorandum of Law in Support of Deft's Motions.
Nov. 11	33	Filed Plaintiff-Intervenor's Motion to Intervene.
" "	34	Filed Memorandum in Support of Motion to Intervene.
" "	35	Filed Linda Shortsleeve's Intervenor's Complaint.
" 24	36	Filed Intervenor Shortsleeve's Withdrawal of Motion to Intervene.
" 28	37	" Pltf's Reply Memorandum.
Dec. 18	38	Filed Defendant's Supplemental Memorandum.
1976		
Feb. 27	39	" Defendant's Supplemental Memorandum II
May 26	40	Filed Joint Supplemental Stipulation of Agreed Facts.
June 2	41	Filed Opinion and Order - - In accordance with the foregoing opinion, it is Ordered that:
		1. Sections 2600 and 2602 of the Welfare Assistance Manual of the Vermont Department of Social Welfare are hereby declared to be invalid under the Supremacy Clause of the United States Constitution insofar as those regulations operate to prohibit federally subsidized grants of Emergency Assistance to applicants who fall within the eligibility group defined by 42 U.S.C. § 606(e) but are not faced with one of the catastrophic situations listed in Section 2602 of the Welfare Assistance Manual.
		2. The defendant, Paul R. Philbrook, his successors in office his agents, employees, delegates, and other persons acting in concert and participating with them, are hereby enjoined from enforcing and implementing Sections 2600 and 2602 of the Welfare Assistance Manual of the Vermont Department of Social Welfare insofar as those regulations operate to prohibit federal subsidized grants of emergency assistance to applicants who fall within the eligibility group defined by 42 U.S.C. §606(e) but are not faced with one of the catastrophic situations listed in Section 2602 of the Welfare Assistance Manual.
		3. Plaintiffs are remanded to the Department of Social Welfare for consideration of their separate applications for emergency assistance in light of this opinion and with reference to their present circumstances. ( Mailed copy to Attys.)
" 14	42	" Deft's Motion to Stay, including Supersedeas in District Court.
" "	43	" Deft's Notice of Appeal. Mailed copy to Stephen W. Kimbell, Esq., David L. Kalib, Esq., Court Reporter, Judge Coffrin and Clerk, U. S. Court of Appeals for the Second Circuit.



DATE 1976	NR.	PROCEEDINGS
June 22		In Chambers before Judge Coffrin, hearing on defendant's motion to stay. William Dalton, Esq. for plaintiff; David Greenburg, Esq. and Georgiana Miranda, Esq. for defendant. Defendant Philbrook present.
" "		Statements made to Court by Mr. Greenburg, Mr. Philbrook and Mr. Dalton.
" "		Ordered: that the stay is granted pending the appeal.
July 13	44	Filed Scheduling Order received from U. S. Court of Appeals; record on appeal to be filed before 7-23-76.
" "		Mailed record on appeal to Clerk, U. S. Court of Appeals for the Second Circuit, N.Y., N.Y. Attys. notified.



## COMPLAINT OF DONNA LYNCH

### I. INTRODUCTION

1. This is a civil rights action seeking declaratory and injunctive relief from certain State regulations which are being applied by the defendant in a way that deprives the plaintiffs of entitlements secured to them by the Aid to Families with Dependent Children provisions of the Social Security Act (42 U.S.C. 601 et seq.). Plaintiffs allege further that said regulations are violative of their rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. The suit is brought under 42 U.S.C. 1983.

### II. JURISDICTION

2. Jurisdiction over this cause is provided by 28 U.S.C. 1343(3).

### III. THREE JUDGE COURT

3. The plaintiffs request that this action be heard by a three judge district court pursuant to 28 U.S.C. 2281, since plaintiffs seek a permanent injunction against the enforcement of State regulations of statewide applicability on the ground that these regulations are repugnant to the United States Constitution.

### IV. PARTIES

4. Plaintiff Donna Lynch resides in Burlington, Vermont with her three year old son. They have been recipients



of public assistance in the form of Supplemental Security Income and ANFC benefits (Vermont's Aid to Families with Dependent Children program) from March 1973 to the present.

5. Paul R. Philbrook is Commissioner of the Vermont Department of Social Welfare. Pursuant to 33 V.S.A. 2505, he is the chief administrator and executive officer of the State's welfare programs. Through his agents, the plaintiffs have been denied the benefits to which they are entitled.

#### V. STATEMENT OF FACTS

6. The State of Vermont, through its Department of Social Welfare, participates in and administers a program of emergency assistance to needy families with children (ANFC-EA). This program is implemented pursuant to the Federal Social Security Act (42 U.S.C. sections 603(a)(5) and 606(e)). Under this joint federal-state program, the State makes payments or provides benefits to persons designated by federal law and in a manner provided for by federal law, in exchange for which the State receives partial reimbursement for the benefits provided and for administrative expenses.

7. In order to participate in the ANFC-EA program a state must have in effect a state plan which spells out: the eligibility conditions imposed for the receipt of emergency assistance; the emergency needs that will be met; and, that the assistance shall be provided forthwith (45 C.F.R. 233.120). Vermont's state plan, with an effective date of July 1, 1970, is attached hereto as Exhibit A.



8. The Vermont state plan for ANFC-EA, in paragraph one and subparagraphs (a) through (d), lists those eligibility criteria required by federal statute and regulation. The plan then adds additional criteria by incorporating into the ANFC-EA eligibility structure portions of the State General Assistance regulations. (Family Services Policy Manual -- now known as the Welfare Assistance Manual -- sections 2600-2603, attached hereto as Exhibit B.)

9. On Saturday, February 1, 1975 plaintiff Donna Lynch received and cashed her \$202.00 monthly Supplemental Security Income check. On Monday, February 3 she received and cashed her first-of-the-month \$61.00 ANFC check. During the day of the third she spent about \$31.00 on various items, and because of a doctor's appointment and other demands on her time, did not purchase food stamps or pay other bills that day. In the early evening of the third she discovered that the remaining \$232.00 had been stolen from her purse. The plaintiff immediately summoned the Burlington police and named the person she believed to have stolen her money. The police investigated the incident but were unable to recover the money.

10. On Wednesday, February 5, 1975, the plaintiff applied to the Burlington District Office of the Department of Social Welfare for emergency assistance because she was without money to pay for rent, utilities and food.

11. The plaintiff had not received emergency assistance in the twelve months prior to her February 5th application.



12. The defendant's agents denied plaintiff's application for emergency assistance, contending that she is ineligible under the State regulations implementing ANFC-EA in that:

1) her income for the thirty days immediately prior to the date of application exceeded a certain level established by said regulations, and;

2) her case did not qualify her for one of the exceptions to this so-called thirty-day income test. (Welfare Assistance Manual, section 2602; see Exhibit B.)

13. The plaintiff, because of the facts alleged above, is destitute and has no resources upon which to rely for basic subsistence needs.

14. The plaintiff will receive no further regular income until March 1, 1975, except for a \$42.00 ANFC check which is due on February 16, 1975.

15. The plaintiffs have no adequate remedy at law which they can pursue to redress their grievances and prevent the injury alleged supra.

## VI. CAUSES OF ACTION

### A. First Cause of Action

The State regulations promulgated by defendant for the implementation of the ANFC-EA program and pursuant to which



plaintiff's application for ANFC-EA was denied impose eligibility criteria for ANFC-EA which are more restrictive than those imposed by federal law and regulation. Said State regulations are thus in conflict with the Social Security Act and, to the extent of said conflict, are invalid under the Supremacy Clause of the United States Constitution.

B. Second Cause of Action

Had plaintiff's emergency situation arisen as a result of flood, fire, hurricane or some other natural disaster, she would have qualified for assistance under Vermont's state plan for ANFC-EA. (See Exhibit B hereto.) The denial of plaintiff's application for emergency assistance solely because her dire circumstances were not the result of a natural disaster denies to plaintiff the equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

C. Third Cause of Action

The regulations challenged herein create a conclusive presumption that emergency need created by other than natural disaster occurs only through the fault of the applicant, thus denying to plaintiff the due process of law guaranteed by the Fourteenth Amendment to the United States Constitution.

VII. CLASS ACTION ALLEGATIONS

This suit is properly maintainable as a class action pursuant to Rule 23(b)(2), Federal Rules of Civil Procedure, inasmuch as the defendant has acted on grounds generally



applicable to the proposed class, thereby making declaratory and/or injunctive relief appropriate as to the class as a whole.

The proposed class herein is composed of all applicants for emergency assistance from the Vermont Department of Social Welfare who meet the eligibility criteria established by federal law and regulation for Aid to Needy Families with Children-Emergency Assistance (ANFC-EA) but who are denied emergency assistance through the application of the state eligibility regulations challenged herein. It is estimated that the class contains at least several hundred members. More precise information as to the size of the class will be submitted after discovery is completed.

Plaintiff Donna Lynch is an adequate representative of the proposed class in that she is a welfare recipient who is in need of emergency assistance and has been denied such assistance pursuant to the allegedly invalid regulations issued by defendant. His claim is thus typical of the claim of the class. Furthermore, plaintiff Lynch is represented by counsel who are experienced in prosecuting the kind of law suit which her claim represents. Through said counsel, plaintiff Lynch will fairly and adequately protect the interests of the class.

The class members have a common factual basis for their claim in that they are all applicants for emergency



welfare assistance under a certain program administered by the State of Vermont and funded jointly by the State and Federal governments. The question of whether or not sections 2600 - 2603 of the Vermont Welfare Assistance Manual conflict with the Social Security Act or deny equal protection to certain applicants for emergency assistance is a question of law common to the class.

#### VIII. RELIEF

WHEREFORE, plaintiffs pray that this Court:

1. Assume jurisdiction of this cause;
2. Convene a three judge federal court to hear the cause;
3. Issue a declaratory judgment declaring the current Vermont State ANFC-EA regulations, on their fact and as applied, to be in conflict with federal statute and regulation and therefore invalid under the Supremacy Clause of the United States Constitution; and declare the current Vermont State ANFC-EA regulations, on their face and as applied, to be violative of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution.
4. Issue a temporary restraining order, preliminary and permanent injunction immediately enjoining the defendant from further denying to plaintiff emergency assistance.
5. Issue a permanent injunction enjoining the defendant from administering the Vermont ANFC-EA program



contrary to the declaration of law made pursuant to plaintiffs' prayer, supra.

6. Grant such other relief as the Court may deem just and proper.



SUBJECT: Emergency Assistance to Needy Families with Children

PURPOSE: To Implement Sections 403(a) (5) and 406 (e) of the Social Security Act in accord with SRS Program Regulation 31-1 dated 1/10/69

The Vermont Department of Social Welfare claims Federal matching for emergency assistance which is authorized as Emergency AFDC (EA), under the State program of Emergency Assistance, during one period of 30 consecutive days beginning with the first day of Emergency Assistance in any twelve consecutive months, including payments which are to meet needs which arose before such 30 day period or are for such needs as rent which extend beyond the 30 day period, to or on behalf of a needy child under the age of 21 and any other member of the household in which he is living if:

- (a) such child is (or, within six months prior to the month in which such assistance is requested, has been) living with any of the relatives specified in section 406(a) (1) of the Act in a place of residence maintained by one or more of such relatives as his or their own home,
- (b) such child is without resources immediately accessible to meet his needs,
- (c) the Emergency assistance is necessary to avoid destitution of such child or to provide living arrangements for him in a home, and
- (d) his destitution or need for living arrangements did not arise because he or such relative refused without good cause to accept employment or training for employment.

Eligibility conditions and methods of furnishing assistance are specified in the Family Services Policy Manual (sections 2600-2603). Assistance to migrant workers with families is available to the same extent as available to any needy family.

Emergency needs are met promptly. The emergency needs that will be met are food, clothing, personal needs and shelter, fuel and utilities, household furnishings, transportation and medical care. The emergency needs are specified in the Family Services Policy Manual (sections 2610-2616 and 2620-2627). Federal matching is claimed at the rate of 50% of the total amount of such expenditures for assistance and may be claimed at the rate of 50% of the total amount expended for administration, including costs incurred in determining eligibility, in the payment process, and for other related administrative activities.



The following services are provided: information, referral, counseling, securing family shelter, child care, and any other services that meet needs attributable to the emergency or unusual crisis situations. Federal matching may be claimed at the rate of 75% of the total amount of such expenditures which are provided directly by staff of the agency or by purchase from other sources, except as available without cost to the agency (e.g., legal aid).

The following method is used to select the expenditures subject to Federal matching:

At the end of each quarter, thirty consecutive days beginning with the first day authorizing aid to a family of AFDC (EA) will be used for claiming Federal matching at 50%.

No more than one such thirty day period per family will be used during any consecutive twelve month period.



REGULATIONS

Volume II

Part 6

2600-2699

General Assistance

7/1/74

2600-2609 Eligibility Criteria

Except as specifically provided in section 2602 (Exceptions), General Assistance shall be granted for only those applicants who:

1. Have received during the 30 day period immediately prior to application net income computed pursuant to General Assistance regulations which is below the applicable ANFC payment level; except that, applicants for General Assistance who are determined to be age 65 or over, blind or disabled, according to SSI standards, and have income below the ANFC payment level shall be eligible to receive monthly the whole difference between their net income and said ANFC payment level for not more than six consecutive months commencing with the month of an approved application following said determination and shall be ineligible thereafter.
2. Have not been disqualified for ANFC or Medicaid benefits because of their refusal to comply with a program eligibility requirement.
3. Actively pursue all potential sources of income, such as: ANFC, Medicaid, Social Security benefits, Veterans' benefits, wages, unemployment or workmen's compensation, support, insurance, etc.
4. Have an emergency need.
5. Have exhausted all available income and resources.
6. Have complied with the employment requirements if applicable.

General Assistance shall be furnished with the understanding that when a recipient subsequently acquires benefits or resources in the amount of \$500.00 or more from an inheritance; cash prize; sale of property; retroactive lump sum Social Security, Supplemental Security Income, Veterans or Railroad Retirement payment; or in or out of court awards or settlements; he shall be required to make reimbursement for the amount of aid furnished during the previous two years.



REGULATIONS

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7/1/74

2601. Definitions

Applicant - means the individual who is applying for General Assistance for his own needs and/or for the needs of those dependents with whom he lives and for whom he is legally responsible. Minors (persons under age 18), except those who have been emancipated by marriage, cannot be considered applicants and can only be included in the application of their parents or legal guardians. Only individuals who are dependent upon and residing with the applicant may be included in the application. All dependents living with the applicant must be included in the application.

Available Resources - means cash on hand or in a bank or other financial institution.

Calculation of Time Periods - all calculations involving periods of time shall include the date of application.

Suitable Employment - employment is considered suitable when:

1. The wages are equal to the applicable minimum wage, or \$2.00 per hour (monetary and in-kind) if no minimum wage exists for that particular employment.
2. The individual is physically and mentally fit to perform the employment offered.
3. The work offered is not at a site subject to a strike or a lockout at the time of the offer.

The worker shall establish when medical documentation is required to determine suitability of employment. The department shall pay the reasonable charge for medical examination and report.

Gainful Employment - an individual shall be considered gainfully employed if he works at least 35 hours per week and the gross income or gross receipts of such employment equals or exceeds the applicable minimum wage. An individual shall be considered gainfully self-employed if he works 35 hours per week and the balance of income remaining after deducting allowable self-employment deductions (2608.2) equals \$2.00 an hour.

Dependent - dependents are a husband, a wife, natural or adopted child(ren) under age 18.



## REGULATIONS

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Part 6

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General Assistance

(E) 12/1/74

2602. Exceptions

Eligibility criteria in section 2600 shall not be applied to any applicant who has exhausted all available income and resources and who has an emergency need.

1. Caused by the death of recipient or his legal dependent, a court-ordered eviction, or a natural disaster, such as flood, fire or hurricane; or
2. For medical care; or
3. If the applicant is applying for General Assistance for the first time since September 5, 1973; or
4. For heating fuel.
  - a. Eligibility:
    - 1) If fuel is purchased for the sole purpose of heating, as indicated by separate billing, then the applicant must demonstrate that he has already spent in the 30 days immediately prior to the date of the application that amount shown on the table below:

Table I

Household Size					
1	2	3	4	5 and 6	7 and 8
\$34.00	\$42.00	\$46.00	\$46.00	\$51.00	\$57.00

- 2) If fuel is used for purposes in addition to heat, and there is no separate billing for the heat portion, then the applicant must demonstrate that he has already spent in the 30 days prior to the date of the application that amount shown in the table below:

Table II

Household Size					
1	2	3	4	5 and 6	7 and 8
\$35.00	\$54.00	\$62.00	\$63.00	\$73.00	\$79.00

## b. Payment:

Assuming the applicant has met the requirement of 4 a. 1) or 2) above, then payment shall be made as follows:

- 1) If the fuel (e.g., oil, coal, or bottled gas) is stored on the premises and there is less than a 72 hour supply on hand, payment shall be made pursuant to regulation 2613.3.
- 2) If fuel (e.g., electricity or piped-in gas supplied by a utility) is not stored on the premises then payment shall be made pursuant to regulation 2613.4, so long as the supplier of the fuel has notified the applicant in writing that within 72 hours from date of application the supplier will no longer provide fuel.



R E G U L A T I O N S

Volume II  
2600-2699

General Assistance

Part 6  
Proposed 5/1/74

2603. Disqualification

- a. When a town service officer or district director has reason to believe that an applicant for General Assistance came into the State for the purpose of receiving General Assistance, the town service officer or district director may find the applicant ineligible. (33 VSA § 3008)
- b. Notwithstanding the provisions of subsection (a) such an applicant in immediate need of General Assistance for himself or a person dependent upon him may be granted General Assistance on an emergency basis which may include the furnishing of transportation to the place from where he came into the State. (33 VSA § 3008)
- c. An alien who is in the country illegally is not eligible for General Assistance.

## DEFENDANT'S ANSWER TO COMPLAINT

Now comes the defendant, by his attorney, and answers the complaint as follows:

### I. INTRODUCTION

1. Inasmuch as paragraph number one of Plaintiff's complaint states conclusions of law, no reply is required; however, with respect to facts asserted, the defendant admits that this action is a civil rights action seeking declaratory and injunctive relief under 42 U.S.C. 1983.

### II. JURISDICTION

2. The defendant denies the averment set forth in paragraph two.

### III. THREE JUDGE COURT

3. The defendant is without sufficient information at this time to form a belief as to whether this case presents a substantial constitutional question requiring the convening of a three judge district court pursuant to 28 U.S.C. 2281.

### IV. PARTIES

4. The defendant admits the allegations in paragraph four.

5. The defendant admits the allegations in paragraph five, except the defendant denies that the plaintiffs are entitled to the benefits which they have been denied.

### V. STATEMENT OF FACTS

6. The defendant admits the allegations in paragraphs six, seven, eight, eleven and twelve.



7. The defendant is without sufficient information to form a belief as to the truth of the allegations in paragraph nine.

8. The defendant admits the allegations in paragraph ten except the defendant is without sufficient information to form a belief as to the truth of the allegation that the plaintiff was without money to pay for rent, utilities and food.

9. The defendant is without sufficient information to form a belief as to the allegations in paragraph thirteen.

10. The defendant is without sufficient information to form a belief as to the allegations in paragraph fourteen, except the defendant admits that the plaintiff was to receive a \$42.00 ANFC check which was due on February 16, 1975.

11. The defendant denies the allegations of paragraph fifteen.

#### VI. CAUSES OF ACTION

12. The defendant denies all the allegations set forth in paragraph VI A.

13. The defendant admits the averment in the first sentence of paragraph VI B concerning the eligibility requirements for emergency assistance. The defendant denies all other allegations in paragraph B.

14. The defendant denies the allegations in paragraph VI C.

## VII. CLASS ACTION ALLEGATIONS

15. The defendant denies the allegations contained in the first paragraph of VII.

The defendant denies that the class described in the second paragraph of VII exists or that there is any means of determining such a class.

The defendant denies all the allegations in the third paragraph of VII except the defendant admits the averment concerning plaintiff's counsel's legal experience.

The defendant denies the allegations contained in the fourth paragraph of VII.

## DEFENSES

1. The Court lacks jurisdiction over the subject matter. (F.R.C.P. 12(b)(1)).

2. The complaint fails to state a claim upon which relief can be granted (F.R.C.P. 12(b)(6)).

3. The complaint does not state a cause of action properly maintainable as a class action.

## AFFIRMATIVE DEFENSE

4. Contributory Negligence:

The plaintiff was contributorily negligent in her actions which resulted in the loss of \$232.00 of her February, 1975 benefits.

Dated at Montpelier, Vermont, this 28th day of February, 1975.



(Ruthann Bigelow)

INTERVENOR'S COMPLAINT

[Much of Intervenor Bigelow's complaint is identical to that of Donna Lynch, and therefore has not been repeated]

I. Introduction (same)

II. Jurisdiction (same)

III. Three Judge Court (same)

IV. Parties

4. Plaintiff, Ruthann Bigelow, resides in Huntington, Vermont, with her two children, ages 2 and 6. They have been recipients of assistance under the ANFC program (Vermont's Aid to Families With Dependant Children program) from March, 1973 to the present.

5. (same)

V. STATEMENT OF FACTS

6. (same)

7. (same)

8. (same)

9. On July 16, 1974, plaintiff Ruthann Bigelow received her regular mid-month ANFC check for \$134. Shortly thereafter, she used \$34 of that amount to pay gas, light and phone bills. Plaintiff then spent the remaining \$100 for a set of bunk beds for her children. This purchase was necessitated by the removal of plaintiff's landlord of a bed he had loaned to her and by the fact that plaintiff's children had



developed a skin disease the treatment of which required that they sleep in separate beds.

10. By July 22, 1974, plaintiff was completely out of money and she had no food in the house to feed her family. Her next regular ANFC check was not due until August 1, 1974, and she had no other source of income and no other resources.

11. On July 22, 1974, plaintiff applied to the Burlington District Office of the Department of Social Welfare for emergency assistance for food.

12. The plaintiff had not received emergency assistance in the twelve months prior to her July 22nd application.

13. The defendant's agents denied plaintiff's application for emergency assistance, contending that she was ineligible under the State regulations implementing ANFC-EA in that:

- 1) her income for the thirty days immediately prior to that date of application exceeded a certain level established by said regulations, and
- 2) her case did not qualify her for one of the exceptions to this so-called thirty-day income test. (Welfare Assistance Manual, Section 2602; Section 2602; see Exhibit B.)

14. At the time of her application for ANFC-EA, plaintiff was destitute and had no resources upon which to rely for basic subsistence needs for herself and her children.



15. At the time of her application for ANFC-EA, plaintiff in all respects met the eligibility criteria imposed by Federal law and regulations for that program.

16. (same as 15)

VI. CAUSES OF ACTION

A. First Cause of Action (same)

B. Second Cause of Action (same)

C. Third Cause of Action (same)

VII. Class Action Allegations  
(substantially the same)

VIII. Relief

1. (same)

2. (same)

3. (same)

4. Issue a permanent injunction enjoining the defendant from continuing to deny emergency assistance to plaintiff Ruthann Bigelow.

5. Issue a permanent injunction enjoining the defendant from continuing to administer the Vermont ANFC-EA program so as to exclude from eligibility persons eligible for the program under the applicable Federal laws and regulations and further enjoining the defendant from continuing to administer said program so as to deny certain applicants therefor their rights to Equal Protection and Due Process under the United States Constitution.

6. (same)

VERIFICATION (substantially the same)

GAIL HUNTLEY

MOTION TO INTERVENE

[Intervenor Huntley's Motion to Intervene is identical to that of Ruthann Bigelow, and therefore has not been repeated.]

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

[Memorandum identical to that of Ruthann Bigelow and therefore has not been repeated.]

INTERVENOR'S COMPLAINT - CLASS ACTION

[Much of Intervenor Huntley's complaint is identical to that of Donna Lynch, and therefore has not been repeated.]

- I. Introduction (same)
- II. Jurisdiction (same)
- III. Three Judge Court
- IV. Parties

4. Plaintiff, Gail Huntley, resides in St. Albans, Vermont, with her 16 month old child. They have been recipients of assistance under the ANFC program (Vermont's Aid to Families with Dependent Children program) for approximately two years.

5. (same)

V. Statement of Facts

- 6. (same)
- 7. (same)
- 8. (same)



9. On April 1, 1975, plaintiff Gail Huntley moved into a new apartment because the one in which she had been living was substandard (no water) and constituted a threat to the health of her infant child. Also on April 1, 1975, plaintiff Huntley received her first-of-the-month ANFC benefits in the amount of \$159.00. Her ANFC benefits are her only source of income and she has no money in checking or savings accounts nor does she own any valuable property.

10. After receiving her April 1st benefits, plaintiff Huntley paid her new landlord \$75 to cover part of the first month's rent; paid \$42 for food stamps and grocery store items not covered by food stamps; paid \$13 to her sister, who is also a welfare recipient, as repayment of a loan; paid \$5 for TV repairs; paid \$4.50 for laundry; and paid \$3 for a taxi to transport her groceries, making total expenditures of April 1st and 2nd of \$142.50.

11. On April 2, 1975, plaintiff Huntley applied to the St. Albans District Office of the Department of Social Welfare for emergency assistance to help pay the \$50 deposit required by the local electric utility before said utility will provide electricity to the premises rented by plaintiff. When she applied for assistance, plaintiff Huntley had only \$13 cash on hand and her next regular ANFC check was not due until April 16, 1975.

12. (same)

13. At the time of her application for ANFC-EA, plaintiff was destitute and had no resources upon which to rely to provide for the basic need of electric service.

14. At the time of her application for ANFC-EA, plaintiff in all respects met the eligibility criteria imposed by Federal law and regulations for that program.

15. (substantially the same)

VI. Causes of Action

A. First Cause of Action (same)

B. Second Cause of Action (same)

C. Third Cause of Action (same)

VII. Class Action Allegations

(substantially the same)

VIII. Relief

1. (same)

2. (same)

3. (same)

4. Issue a temporary restraining order and preliminary and permanent injunctions enjoining the defendant from continuing to deny emergency assistance to plaintiff Gail Huntley.

5. Issue a permanent injunction enjoining the defendant from continuing to administer the Vermont ANFC-EA program so as to exclude from eligibility persons eligible for the program under the applicable Federal laws and regulations and further enjoining the defendant from continuing to



administer said program so as to deny certain applicants therefor their rights to Equal Protection and Due Process under the United States Constitution.

6. (same)

(Leland Young)

INTERVENOR'S COMPLAINT - CLASS ACTION

[Much of Intervenor Young's complaint is identical to that of Donna Lynch, and therefore has not been repeated.]

I. Introduction (same)

II. Jurisdiction (same)

III. Three Judge Court (same)

IV. Parties

4. Plaintiff, Leland Young, resides in St. Johnsbury, Vermont with his wife and three children, ages two years, one year, and three weeks.

5. (same)

V. Statement of Facts

6. (same)

7. (same)

8. (same)

9. On September 26, 1975, the plaintiff Young's refrigerator ceased to function. He was informed that it would cost him approximately \$100.00 to repair it. Since that time, plaintiff has had to go to the store several times each day to buy milk and other food for his family. Plaintiff has been unable to find a new refrigerator for less than \$100.00 in cash. He has been unable to obtain credit for the purchase of a new refrigerator.

10. On October 1, 1975, plaintiff received his first of the month ANFC benefits in the amount of \$241.00. From



this, he paid \$120.00 in rent, \$45.00 for food stamps, \$35.00 for a crib, \$25.00 for miscellaneous household items and \$15.00 for clothing. Plaintiff will receive another ANFC check in the middle of the month in the amount of approximately \$160.00. He must use \$45.00 of this amount for food stamps, approximately \$97.00 for his electric bill and \$18.00 for a telephone bill.

11. On September 29, 1975, plaintiff Young applied to the St. Johnsbury District Office of the Department of Social Welfare for emergency assistance to help pay the \$110.00 for a second hand refrigerator.

12. The defendant's agents denied plaintiff's application for emergency assistance, contending that he was ineligible under the State regulations implementing ANFC-EA in that:

- 1) his income for the thirty days immediately prior to the date of application exceeded a certain level established by said regulations, and;
- 2) his case did not qualify him for one of the exceptions to this so-called thirty-day income test. (Welfare Assistance Manual Section 2602; see Exhibit B.)

13. At the time of his application for ANFC-EA, plaintiff was destitute and had no resources upon which to rely to provide for the basic need of a refrigerator.

14. At the time of his application for ANFC-EA, plaintiff in all respects met the eligibility criteria imposed by Federal law and regulations for that purpose.

15. The plaintiff has no adequate remedy at law which he can pursue to redress his grievance and prevent the injury alleged supra.

VI. Causes of Action

- A. First Cause of Action (same)
- B. Second Cause of Action (same)
- C. Third Cause of Action (same)

VII. Class Action Allegations  
(substantially the same)

VIII. Relief  
(substantially the same)



### STIPULATION OF AGREED FACTS

NOW COME the parties to the above-captioned action, through their respective attorneys, and stipulate and agree to the existence of the following facts relevant to a determination of the issues raised by this action.

1. The State of Vermont participates in the joint federal-state program of Aid to Families with Dependent Children (AFDC) authorized by Part A of Title IV of the Social Security Act. 42 U.S.C. 601 et seq. The program is known as Aid to Needy Families with Children (ANFC) in Vermont. Most ANFC recipients receive a check on the first and sixteenth of each month; and will be referred to hereinafter as "regular" ANFC recipients.

2. An optional component of the ANFC program is known as Emergency Assistance to Needy Families with Children (ANFC-EA). As its name applies, ANFC-EA is designed to meet the emergency needs of families with children. The program is not limited, however, to regular ANFC recipients; any needy family with children may qualify. This component of the ANFC program is created and defined by 42 U.S.C. 606(e); while 42 U.S.C. 603(a)(5) provides for 50% federal funding of ANFC-EA when a state chooses to participate. The federal regulations concerning ANFC-EA are found at 45 C.F.R. 233.120, and are attached hereto as exhibit A.

3. Vermont has chosen to participate in the ANFC-EA

program and receives federal financial participation for grants to recipients under the program.

4. As a prerequisite to participation in the emergency assistance component of ANFC, Vermont has submitted to the federal Department of Health, Education and Welfare a "state plan" describing the state's ANFC-EA program. Pursuant to the provisions of 45 C.F.R. § 233.120(a)(1), the state plan must "Specify the eligibility conditions imposed for the receipt of emergency assistance." The Vermont state plan addresses itself to this requirement by setting out the federal definition of emergency assistance and in addition by stating that "Eligibility conditions and methods of furnishing assistance are specified in the Family Services Policy Manual [now the Welfare Assistance Manual] (sections 2600 - 2603)." The sections of the Manual referred to are those that define the eligibility criteria for the State's General Assistance (GA) program. The GA program, authorized by the provisions of 33 V.S.A. § 3001, et seq., is also designed to meet emergency needs, but is in some respects broader in scope than the ANFC-EA program in that it provides assistance to any eligible person, not just to families with children.

5. The Vermont State plan for ANFC-EA has been approved by HEW, and is attached as exhibit B. The pertinent General Assistance eligibility regulations are attached as exhibit C.



6. In effect, therefore, the Vermont ANFC-EA program is incorporated into the state General Assistance (GA) program. Eligibility criteria for ANFC-EA are identical to those for General Assistance, and in fact no distinction is drawn between the two programs at the welfare district office level. In other words, a family with children having an emergency need applies for assistance under the GA program, and is granted or denied assistance solely on the basis of GA eligibility criteria.

7. General Assistance grants to applicants with children are not identified as ANFC-EA subject to federal financial participation until after GA has been granted and the record of the grant is forwarded to the Welfare Department's central office in Montpelier. After the record of assistance granted is received, Welfare Department personnel review the records and identify those which are subject to federal financial participation. The process works as follows:

A. A General Assistance grant is made to an applicant with children by a welfare worker applying the usual General Assistance eligibility criteria.

B. The worker enters the name of the recipient and other pertinent information onto a DSW form 530, a copy of which is attached as exhibit D. The worker also codes the grant with the symbol "GC" which means GA to a family with children.

C. Once each week, the accumulated form 530's are forwarded from the Welfare Department District offices to the Department's central office in Montpelier.

D. Once each quarter, state office personnel total the dollar amount of all "GC" grants and, based on historical statistics, submit an estimated claim of 40% of the quarterly total to the federal government for reimbursement.

8. The Welfare Department also undertakes a second procedure which is designed to accurately balance the account with regard to federal reimbursement. In other words, if the 40% estimated claim proves to be too high or too low, the necessary adjustments are made. This procedure works as follows:

A. The information concerning individual grants (name of recipient, date of assistance, amount, etc.) is copied from the form 530's and entered onto individual "payment cards". (An example of such a card is attached as exhibit E.)

B. Then, all "GC" grants which are in fact subject to reimbursement are totaled and adjustments are made.

C. At present, because of staffing problems, this second procedure takes place about 15 months after the assistance is actually provided to the recipient.

9. As stated, in Vermont an applicant with an emergency need must qualify under the State's General Assistance eligibility criteria. These criteria are different from those governing federal financial participation for ANFC-EA, so that certain grants that otherwise would be reimbursable are not authorized under the General Assistance regulations. For example, an ANFC recipient with an emergency need who has



received a General Assistance grant in the past and whose income during the preceding 30 days is above a certain standard would not be eligible for a second GA grant under State regulations, unless the need were caused by a natural disaster, court ordered eviction or necessary medical care. This is true, even though the State could claim reimbursement for the second grant if the federal definition of emergency assistance were met.

10. Thus, a family with an emergency need can be denied assistance in Vermont even though the assistance for which the family has applied would be reimbursable under federal standards.

11. During FY-74, the State of Vermont claimed \$141,249.00 in federal matching funds for grants under the ANFC-EA program.

12. There are approximately 6000 regular ANFC households in Vermont. Each of these households receives 80% of its State computed standard of need.

13. Plaintiff Donna Lynch lives in Burlington, Vermont, with her three year old son. She has been a regular ANFC recipient since March of 1973 and also receives disability benefits under the Supplemental Security Income (SSI) program. Her total income from these two welfare programs is approximately \$305 per month. She has no other source of income.

14. In early February, 1975, plaintiff Lynch received and cashed her regular ANFC check in the amount of \$61.00 and

her SSI check in the amount of \$202.00. On February 3, 1975, the cash proceeds from these two checks (except for \$30.00 which had already been spent) were stolen from plaintiff Lynch's purse. The police were summoned and conducted an investigation but none of the stolen money was recovered.

15. Because of the theft, plaintiff Lynch on February 5, 1975, applied to the Burlington District Office of the Vermont Department of Social Welfare for emergency assistance from the General Assistance program. She had neither applied for nor received assistance under this program during the twelve months immediately preceeding February 5, 1975 although she had received GA before that period. Her immediate need was for money to pay for food, past due rent and past due utility charges for herself and her child. Her next regular ANFC check, in the amount of \$42.00, was not due to arrive until February 16, 1975, and she had no source of money in the meantime to meet her basic needs.

16. Plaintiff Lynch's application, of February 5, 1975, was denied on the basis of a state General Assistance regulation (See exhibit C) which, with certain exceptions not applicable here, renders ineligible an applicant who has received GA in the past and whose income during the thirty days immediately preceding the date of application exceeds a certain level established by the regulations. Plaintiff Lynch had received GA before and her income during the preceding 30 days exceeded the allowable level for her family.



17. Plaintiff Gail Huntley lives in St. Albans, Vermont, with her two year old child. Her sole source of income is a regular ANFC grant which pays her \$159 on the first and \$98 on the sixteenth of each month, for a total of \$267 per month.

18. On April 1, 1975, plaintiff Huntley moved into a new apartment because of a failure of the old apartment's water supply.

19. Plaintiff Huntley used all but \$13 of the regular ANFC check she received on April 1, 1975, to pay part of the first month's rent on the new apartment, to purchase food and to take care of several other minor necessary expenses. She then was informed by the local electric utility that a \$50 deposit was required before electric service would be provided to her new apartment.

20. On April 2, 1975, plaintiff Huntley applied for emergency assistance from the General Assistance program to help pay the required deposit for electric service. She had no means with which to pay the deposit and her next regular ANFC check was not due until April 16, 1975.

21. During the twelve months prior to April 2, 1975, plaintiff Huntley had received \$17 in General Assistance which was eligible for federal financial participation.

22. Plaintiff Huntley's application for emergency assistance on April 2, 1975, was denied on the basis of the

same state General Assistance regulation which, with certain exceptions not applicable here, renders ineligible an applicant who has received GA in the past and whose income during the thirty days immediately preceding the date of application exceeds a certain level established by the regulations.

Plaintiff Huntley had received GA in the past and the income from her regular ANFC checks exceeded the allowable level for her family.

23. Plaintiff Ruthann Bigelow, a regular ANFC recipient, resides in Huntington, Vermont, with her two children, ages 2 and 6.

24. On July 16, 1974, plaintiff Bigelow received her regular mid-month ANFC check in the amount of \$134. She immediately spent \$34 from the proceeds of that check to pay gas, light and phone bills. Shortly thereafter, she spent the remaining \$100 for a set of bunk beds for her children. This purchase was necessitated by the removal by plaintiff's landlord of a bed he had loaned to her and by the fact that plaintiff's children had developed a skin disease the treatment of which required that they sleep in separate beds.

25. As a result of the extraordinary expenditure for the bunk beds, plaintiff Bigelow was without money to purchase food by July 22, 1974, and had inadequate food on hand to feed her family until receipt of her next regular ANFC check on August 1, 1974. She had no alternative source of money or food.



26. On July 22, 1974, plaintiff Bigelow applied for emergency assistance for food from the General Assistance program. During the twelve months prior to July 22, 1974, she had received "in-kind" assistance for food under the General Assistance program with a total value of \$5.76. This grant of \$5.76 was claimed for federal financial participation under the emergency assistance program.

27. Plaintiff Bigelow's application for emergency assistance on July 22, 1974, was denied on the basis of the same State General Assistance regulation which, with certain exceptions not applicable here, renders ineligible an applicant who has received General Assistance in the past and whose income during the thirty days immediately preceding the date of application exceeds a certain level established by the regulations. Plaintiff Bigelow had received General Assistance in the past and the income from her regular Aid to Needy Families with Children checks exceeded the allowable level for her family.

28. None of the plaintiffs herein have at any time refused without good cause to accept employment or training for employment.

Dated at Montpelier, Vermont, this 24th day of September, 1975.

s/  
STEPHEN W. KIMBELL  
Vermont Legal Aid, Inc.  
150 Cherry Street  
Burlington, Vermont  
Attorney for Plaintiff

s/  
DEAN B. PINELES  
Assistant Attorney General  
State of Vermont  
Montpelier, Vermont  
Attorney for Defendant



3/4	257947	ROBAIR, Dean	BURL	TMC69465	GC	LKK	13.50	10/4-10/10	Groceries
3/4	257948	HEJNAR, Joan	WIN	T69414	GC	DFP	22.00	10/4-10/10	Room & Board \$20.00
3/4	257949	OLDS, Harold	BURL	T70842	GC	DEM	35.00	10/4-10/10	PNI \$2.00
3/4	257950	AIKEY, James C.	COLCH	T68790	GC	DEM	22.00	10/4-10/10	Room \$13.00
3/4	257951	HALL, Ann	ESS. JUNCT	T70721	GC	DFP	23.00	10/4-10/10	Rest/Meals \$21.00
3/4	257952	DECELL, Linda J.	BURL	C70860	C X	JLF	460.00	9/1-10/31	Room & Board \$20.00
3/4	257953	SPICER, Charles Jr.	BURL	T70867	GC	WJS	42.00	10/4	PNI \$2.00
3/4	257954	BEALPRE, Byster	BURL	T70686	GC	DEM	19.32	10/4-10/10	Groceries
3/4	257955	HACKETT, Joseph	BURL	TC52253	GC	DFP	8.00	10/4-10/10	Emergency grant
3/4	257956	SYSLING, Mary E.	WIN	C20895	C X	FCR	322.00	10/1-10/31	Rest/Meals
3/4	257957	FORTIN, Blanche	WIN	T69631	GA	VR	48.00	10/4-10/10	Room & Board \$17.00
3/4	257958	WEDGE, Charles	BURL	T52356	GA	DEM	38.00	10/4-10/10	PNI \$2.00
3/4	257959	BLAIR, Victoria	BURL	T70871	GC	VR			Room \$15.00
3/4	257959	XXXXXXXXXXXXXXXXXXXX					22.00	10/4-10/10	Rest/Meals \$21.00
									Room & Board \$20.00
									PNI \$2.00

## AUDIT CODE KEY:

Aged  
Blind  
Disabled  
ANFC

GENERAL ASSISTANCE:  
GA—Family with adults only  
GC—Family with children

HOME HEALTH SERVICES  
A-HH—Aged  
B-HH—Blind  
D-HH—Disabled

GA Assistance  
Supplementation to  
Categorical Program

Place letter A, B, D, or C in  
front of the appropriate code  
for General Assistance  
AGA BGA DGA CGC

TE:

TRICT OFFICE REPORTING:

Signed:

District Supervisor  
or Authorized Agent

Instructions on Back

GENERAL ASSISTANCE

ADDRESS  
IF KNOWN

ASSOCIATE WITH:

CASE NO. 7-68790

REMARKS:

DATE AUDIT	VENDOR/CHECK	AUDIT CODE	PAID	PURPOSE	TOTAL PAID	TOTAL MO. VOUCHERS
10/12	Learning check BDO		6/11/72	cash	25.00	
10/12	" " "		6/11/72	other	11.31	
10/12	" " "		6/11/72	"	14.31	
10/22	" " "		6/21	food	3.00	
10/24	" " "		7/17	other	23.00	
10/27	" " "		7/18	"	25.00	
10/13	" " "		7/18	"	25.00	
10/20	" " "		7/25	"	25.00	
10/16	" " "		8/11	"	25.00	
10/16	" " "		10/31	"	25.00	
10/14	" " "		11/6	"	25.00	
10/12	" " "		11/28	"	25.00	
10/28	" " "		12/11	"	25.00	
10/15	" " "		12/11	"	25.00	
10/10	" " "		12/12	"	25.00	
10/17	" " "		12/26	"	25.00	
10/21	Forest 11000		11/18	"	25.00	
10/27	Learning at BDO (cash)		11/23	Clothing	24.14	
10/27	" " "		11/23	other	20.00	
10/73	" " "		7/3	food	20.00	
10/73	" " "		10/1-73	" " other	22.00	
10/73	" " "		10/10-73	" " " "	22.00	
10/73	" " "		10/15-73	" " " "	22.00	

2561  
Record  
BAGUE, L. I., N. Y.

10M-10/71

SOCIAL WELFARE DEPT.  
STATE OF VERMONT

6X0-1  
343

Exhibits E A



## INSTRUCTIONS

### Checks

1. Post each check, written and released, to handwritten work copy.
2. Post each check, written but held for future release (i.e., AABC/ANFC continuing grant for district payroll(s) for next following month) to separate work copy.
3. "Void" all spoiled or cancelled checks; enter on work copy and attach "void" checks.
4. Prepare, at end of week, three typed copies of handwritten work copy (Items 1 and 2); obtain District Director's signature.
5. Mail original and one copy, with "Void" checks attached, to Administrative Services no later than following Monday (if director or designated substitute not available to sign, mail unsigned.)
6. File office copy with work copy for reference and/or audit.
7. In the space marked WEEK ENDING will be the latest date in the week being reported, e.g., Saturday, May 8th would be the latest reporting day in the week beginning May 2. An AS-530A for this period would therefore be dated May 8, 19— —.
8. In the DATE column should be the date of the check.
9. In the CHECK space should be the preprinted number of the check.
10. The NAME OF CLIENT & TOWN OF RESIDENCE are self-explanatory.
11. The CASE No. is the case number of the client.
12. The AUTHORIZED column is for the initials of the person authorizing the expenditure.
13. The AMOUNT column is for the amount expended.
14. The PERIOD COVERED column should clearly state the period of time for which the expenditure is being made, i.e., for a utility bill, it might show 1/74 to 2/74.
15. The ITEMS column should clearly show in some understandable fashion the reason for which a check was issued. Abbreviations are certainly acceptable. Example: Food, clothing, shelter, Food Stamps (FS), fuel, utilities, rent, etc. In cases where the district issues a check to replace a lost or stolen check, the items column should indicate replacement and date of replaced check. When a non-recurring check is issued, a description of the non-recurring item should be placed in this column.

DSW530A  
R 1/74

[illegible]

AUDIT CODE KEY

A—Aged  
B—Blind  
D—Disabled  
C—ANFC

GENERAL ASSISTANCE  
CA—Family with 1 child only  
CC—Family with 2 or more

CA Assistance  
Supplementation to  
Categorical Program

Place letter A, B, D, or C in front of the appropriate code for General Assistance  
ACA BCA DCA CCC

DATE \_\_\_\_\_

DISTRICT OFFICE REPORTING

Signed \_\_\_\_\_

District Supervisor  
or Authorized Agent

Instructions on Back

Exhibit D



REGULATIONS

Volume II  
2600-2699

General Assistance

Part 6  
Proposed 5/1/74

2603. Disqualification

- a. When a town service officer or district director has reason to believe that an applicant for General Assistance came into the State for the purpose of receiving General Assistance, the town service officer or district director may find the applicant ineligible. (33 VSA § 3008)
- b. Notwithstanding the provisions of subsection (a) such an applicant in immediate need of General Assistance for himself or a person dependent upon him may be granted General Assistance on an emergency basis which may include the furnishing of transportation to the place from where he came into the State. (33 VSA § 3008)
- c. An alien who is in the country illegally is not eligible for General Assistance.

REGULATIONS

Volume II

Part 6

2600-2699

General Assistance

3/31/75

2602. Exceptions

Eligibility criteria in section 2600 shall not be applied to any applicant who has exhausted all available income and resources and who has an emergency need:

1. Caused by the death of recipient or his legal dependent, a court-ordered eviction, or a natural disaster, such as flood, fire or hurricane; or
2. For medical care; or
3. If the applicant is applying for General Assistance for the first time since September 5, 1973.



REGULATIONS

Volume II

Part 6

2600-2699

General Assistance

7/1/74

2601. Definitions

Applicant - means the individual who is applying for General Assistance for his own needs and/or for the needs of those dependents with whom he lives and for whom he is legally responsible. Minors (persons under age 18), except those who have been emancipated by marriage, cannot be considered applicants and can only be included in the application of their parents or legal guardians. Only individuals who are dependent upon and residing with the applicant may be included in the application. All dependents living with the applicant must be included in the application.

Available Resources - means cash on hand or in a bank or other financial institution.

Calculation of Time Periods - all calculations involving periods of time shall include the date of application.

Suitable Employment - employment is considered suitable when:

1. The wages are equal to the applicable minimum wage, or \$2.00 per hour (monetary and in-kind) if no minimum wage exists for that particular employment.
2. The individual is physically and mentally fit to perform the employment offered.
3. The work offered is not at a site subject to a strike or a lockout at the time of the offer.

The worker shall establish when medical documentation is required to determine suitability of employment. The department shall pay the reasonable charge for medical examination and report.

Gainful Employment - an individual shall be considered gainfully employed if he works at least 35 hours per week and the gross income or gross receipts of such employment equals or exceeds the applicable minimum wage. An individual shall be considered gainfully self-employed if he works 35 hours per week and the balance of income remaining after deducting allowable self-employment deductions (2608.2) equals \$2.00 an hour.

Dependent - dependents are a husband, a wife, natural or adopted child(ren) under age 18.

# REGULATIONS

Volume II

2600-2699

General Assistance

Part 6

7/1/74

## 2600-2609 Eligibility Criteria

Except as specifically provided in section 2602 (Exceptions), General Assistance shall be granted for only those applicants who:

1. Have received during the 30 day period immediately prior to application net income computed pursuant to General Assistance regulations which is below the applicable ANFC payment level; except that, applicants for General Assistance who are determined to be age 65 or over, blind or disabled, according to SSI standards, and have income below the ANFC payment level shall be eligible to receive monthly the whole difference between their net income and said ANFC payment level for not more than six consecutive months commencing with the month of an approved application following said determination and shall be ineligible thereafter.
2. Have not been disqualified for ANFC or Medicaid benefits because of their refusal to comply with a program eligibility requirement.
3. Actively pursue all potential sources of income, such as: ANFC, Medicaid, Social Security benefits, Veterans' benefits, wages, unemployment or workmen's compensation, support, insurance, etc.
4. Have an emergency need.
5. Have exhausted all available income and resources.
6. Have complied with the employment requirements if applicable.

General Assistance shall be furnished with the understanding that when a recipient subsequently acquires benefits or resources in the amount of \$500.00 or more from an inheritance; cash prize; sale of property; retroactive lump sum Social Security, Supplemental Security Income, Veterans or Railroad Retirement payment; or in or out of court awards or settlements; he shall be required to make reimbursement for the amount of aid furnished during the previous two years.

DEPOSITION  
EXHIBIT



SUBJECT: Emergency Assistance to Needy Families with Children

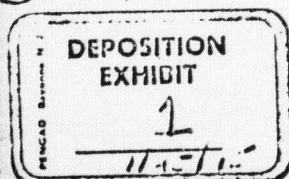
PURPOSE: To Implement Sections 403(a) (5) and 406 (e) of the Social Security Act in accord with SRS Program Regulation 31-1 dated 1/10/69

The Vermont Department of Social Welfare claims Federal matching for emergency assistance which is authorized as Emergency AFDC (EA), under the State program of Emergency Assistance, during one period of 30 consecutive days beginning with the first day of Emergency Assistance in any twelve consecutive months, including payments which are to meet needs which arose before such 30 day period or are for such needs as rent which extend beyond the 30 day period, to or on behalf of a needy child under the age of 21 and any other member of the household in which he is living; if:

- (a) such child is (or, within six months prior to the month in which such assistance is requested, has been) living with any of the relatives specified in section 406(a) (1) of the Act in a place of residence maintained by one or more of such relatives as his or their own home,
- (b) such child is without resources immediately accessible to meet his needs,
- (c) the Emergency assistance is necessary to avoid destitution of such child or to provide living arrangements for him in a home, and
- (d) his destitution or need for living arrangements did not arise because he or such relative refused without good cause to accept employment or training for employment.

Eligibility conditions and methods of furnishing assistance are specified in the Family Services Policy Manual (sections 2600-2603). Assistance to migrant workers with families is available to the same extent as available to any needy family.

Emergency needs are met promptly. The emergency needs that will be met are food, clothing, personal needs and shelter, fuel and utilities, household furnishings, transportation and medical care. The emergency needs are specified in the Family Services Policy Manual (sections 2610-2616 and 2620-2627). Federal matching is claimed at the rate of 50% of the total amount of such expenditures for assistance and may be claimed at the rate of 50% of the total amount expended for administration, including costs incurred in determining eligibility, in the payment process, and for other related administrative activities.



EXHIBIT

The following services are provided: information, referral, counseling, securing family shelter, child care, and any other services that meet needs attributable to the emergency or unusual crisis situations. Federal matching may be claimed at the rate of 75% of the total amount of such expenditures which are provided directly by staff of the agency or by purchase from other sources, except as available without cost to the agency (e.g., legal aid).

The following method is used to select the expenditures subject to Federal matching:

At the end of each quarter, thirty consecutive days beginning with the first day authorizing aid to a family of AFDC (EA) will be used for claiming Federal matching at 50%.

No more than one such thirty day period per family will be used during any consecutive twelve month period.



§ 233.120 Emergency assistance to needy families with children.

(a) *Requirements for State plans.* A State plan under Title IV, Part A, of the

Social Security Act, providing for emergency assistance to needy families with children must:

(1) Specify the eligibility conditions imposed for the receipt of emergency assistance. These conditions may be more liberal than those applicable to other parts of the plan. (See paragraph (b) (1) of this section for scope of Federal financial participation.)

(2) Specify if migrant workers with families will be included and, if emergency assistance will not be available to them Statewide, the part or parts of the State in which it will be provided.

(3) Specify the emergency needs that will be met, whether mass feeding or clothing distribution are included, and the methods of providing payments, medical care, and other remedial care.

(4) Specify which of the following services will be provided: Information, referral, counseling, securing family shelter, child care, legal services, and any other services that meet needs attributable to the emergency or unusual crisis situations.

(5) Provide that emergency assistance will be given forthwith.

(b) *Federal financial participation.* Beginning with the effective date of approval of the amendment to the State plan for AFDC which provides for emergency assistance to needy families with children pursuant to section 406(e) of the Act:

(1) Federal financial participation is available for emergency assistance to or on behalf of a needy child under the age of 21 and any other member of the household in which he is living if—

(i) Such child is (or, within 6 months prior to the month in which such assistance is requested, has been) living with any of the relatives specified in section 40 (a) (1) of the Act in a place of residence maintained by one or more of such relatives as his or their own home,

(ii) Such child is without resources immediately accessible to meet his needs,

(iii) The emergency assistance is necessary to avoid destitution of such child or to provide living arrangements for him in a home, and

(iv) His destitution or need for living arrangements did not arise because he or such relative refused without good cause to accept employment or training for employment.

(2) The rate of Federal financial participation in expenditures during a quarter as emergency assistance in accordance with the provisions of an approved State plan is 50 percent of the total amount of such expenditures which are (i) in the form of money payments, payments in kind, or such other payments as the State agency specifies, including loans and vendor payments, or medical or remedial care recognized under State law, with respect to or on behalf of individuals described in subparagraph (1) of this paragraph; (ii) for administration, including costs incurred in determining eligibility, in the payment process, and for other related administrative activities; and (iii) for the following services provided to individuals described in subparagraph (1) of this paragraph, directly by staff of the agency, or by purchase from other sources: Information, referral, counseling, securing family shelter, child care, legal services, and any other services that meet needs attributable to the emergency or unusual crisis situations.

(3) Federal matching is available only for emergency assistance which the State authorizes during one period of 30 consecutive days in any 12 consecutive months, including payments which are to meet needs which arose before such 30-day period or are for such needs as rent which extend beyond the 30-day period. Another condition for Federal participation is that the State has a reasonable method of determining the value of goods in kind or services provided for emergency assistance.

[34 F.R. 393, Jan. 10, 1969]

BEST COPY AVAILABLE

SUPPLEMENTAL STIPULATION OF AGREED FACTS

NOW COME the parties to the above-captioned action, through their respective attorneys, and stipulate and agree that subsequent to filing herein of the STIPULATION OF AGREED FACTS dated September 24, 1975, the General Assistance regulations relevant to this case and attached as Exhibit C to said stipulation were modified.

The parties hereby stipulate further that the General Assistance regulations attached hereto as Exhibit 1 are the modified regulations, in effect as of the date of this stipulation, and should be substituted for the regulations submitted as Exhibit C to the original STIPULATION OF AGREED FACTS herein.

Signed at Burlington, Vermont, this 15th day of May, 1976.

Signed at Montpelier, Vermont, this 25th day of May, 1976.



REGULATIONS

Welfare  
Assistance  
2000 - 2009

General Assistance  
4/9/76

Eligibility Criteria

2000. Eligibility Criteria

A. Except as specifically provided in 2602 (catastrophic situations) General Assistance shall be granted to those applicants who:

1. Have received during the 30 day period immediately prior to application net income computed pursuant to General Assistance regulations which is below the applicable ANFC payment level; except that, applicants for General Assistance who are determined to be age 65 or over, blind or disabled, according to SSI standards, and have income below the ANFC payment level shall be eligible to receive monthly the whole difference between their net income and said ANFC payment level for not more than six consecutive months commencing with the month of an approved application following said determination and shall be ineligible thereafter; and
2. Have not been disqualified for ANFC or Medicaid benefits because of their refusal to comply with a program eligibility requirement; and
3. Actively pursue all potential sources of income, such as: ANFC, Medicaid, Social Security benefits, Veteran's benefits, wages, unemployment or workmen's compensation, support, insurance, etc.; and
4. Have an emergency need; and
5. Have exhausted all available income and resources; and
6. Have complied with the employment requirements in 2607.1, if applicable.

B. General Assistance shall be furnished with the understanding that when a recipient subsequently acquires benefits or resources in the amount of \$500.00 or more from an inheritance, cash prize, sale of property, retroactive lump sum Social Security, Supplemental Security Income, Veterans or Railroad Retirement payment, or in or out of court awards or settlements, he shall be required to make reimbursement for the amount of aid furnished during the previous two years.

Vermont Department of Social Welfare  
Agency of Human Services

Bulletin No. 76-50

Exhibit 1, p. 1

# REGULATIONS

Welfare

Assistance

2600 - 2609

General Assistance

Eligibility Criteria

4/1/76

## 2601. Definitions

Able-bodied - means a person who has no physical or mental disability which prevents him from working.

Applicant - means the individual who is applying for General Assistance for his own needs and/or for the needs of those dependents with whom he lives and for whom he is legally responsible. All individuals who reside with the applicant must be included in the application if they are legally dependent upon the applicant or the applicant is legally responsible for such individuals. Individuals age 18 or over who live with their parents shall not have their needs or income and resources included in the application of their parents. Such individuals are considered a separate family and must complete a separate application.

Available Resources - means cash on hand or in a bank or other financial institution.

Calculation of Time Periods - all calculations involving periods of time shall include the date of application.

Dependent - dependents are a husband, a wife, natural or adopted child(ren) under age 18. A married person under age 18 has been emancipated by marriage and is not considered a minor dependent. An unborn child is considered a minor dependent.

Gainful Employment - an individual shall be considered gainfully employed if he works at least 35 hours per week and the gross income or gross receipts of such employment equals or exceeds the applicable minimum wage. An individual shall be considered gainfully self-employed if he works 35 hours per week and the balance of income remaining after deducting allowable self-employment deductions (2608.2) equals \$2.00 an hour.

Suitable employment - employment is considered suitable when:

1. The wages are equal to the applicable minimum wage, or \$2.00 per hour (monetary and in-kind) if no minimum wage exists for that particular employment.
2. The individual is physically and mentally fit to perform the employment offered.
3. The work offered is not at a site subject to a strike or a lockout at the time of the offer.

The worker shall establish when medical documentation is required to determine suitability of employment. The department shall pay the reasonable charge for medical examination and report.



# REGULATIONS

2002

Welfare

Assistance

2600 - 2609

General Assistance

Proposed 4/1/76

Eligibility Criteria

## 2602. Catastrophic Situations

Eligibility criteria in section 2600 shall not be applied to any applicant who has exhausted all available income and resources and who has an emergency need caused by one of the following catastrophic situations:

- a. Death of a spouse or minor dependent child; or
- b. A court ordered eviction ; or
- c. A natural disaster such as flood, fire or hurricane; or
- c. An emergency medical need.

## REGULATIONS

Welfare

Assistance

2600-2609

Eligibility Criteria

1.277C

2603. Disqualification

- a. When a town service officer or district director has reason to believe that an applicant for General Assistance came into the State for the purpose of receiving General Assistance, the town service officer or district director may find the applicant ineligible. (33 VSA § 3008)
- b. Notwithstanding the provisions of subsection (a) such an applicant in immediate need of General Assistance for himself or a person dependent upon him may be granted General Assistance on an emergency basis which may include the furnishing of transportation to the place from where he came into the State. (33 VSA § 3008)
- c. An alien who is in the country illegally is not eligible for General Assistance.

2604. Applicant's Responsibility

The applicant is the primary source of information about his circumstances. Respect for his right to privacy places responsibility on the applicant to furnish complete and accurate information.

Pursuant to 33 VSA Section 3005 and 3006, all General Assistance applications require investigation and recording of the circumstances of the person alleged to need General Assistance to determine eligibility. Applicant must furnish information required as to physical condition, earnings or other income, ability of all members of his family to be employed, the cause of the person's condition, the ability and willingness of persons legally liable for his support to assist and other relevant data.

The department retains the right to verify any or all information provided by the applicant. To be eligible for consideration for assistance a person must agree to the requisite investigation of his circumstances.



### OPINION AND ORDER

Plaintiff Donna Lynch and three intervening plaintiffs, Ruthann Bigelow, Gail Huntley, and Leland Young, challenge the validity of Vermont's federally assisted program of emergency assistance to needy families with children (ANFC-EA<sup>1/</sup>). ANFC-EA is one component of the joint federal-state welfare program of Aid to Needy Families with Children (ANFC) adopted under Vermont statutes, 33 V.S.A. §§2701 et seq. and the federal Social Security Act, 42 U.S.C. §601 et seq., referred to in other states as Aid to Families with Dependent Children (AFDC). The ANFC-EA program was initiated at the federal level by 1968 amendments to the Social Security Act,<sup>2/</sup> which were designed to encourage states, at their option, to provide short-term relief within the framework of on-going AFDC programs to families faced suddenly with destitution.<sup>3/</sup> Vermont's participation in the emergency assistance program became effective on July 1, 1970.<sup>4/</sup> Federal funding is available to reimburse fifty per-cent of the state's expenditures under ANFC-EA, 42 U.S.C. §603(a)(5),<sup>5/</sup> provided the program satisfies certain federal requirements.<sup>6/</sup>

Plaintiffs are recipients of ANFC who applied for emergency assistance in Vermont and were denied. They contend that the state ANFC-EA regulations, by operating to deny them emergency assistance, deprive them of their rights to equal protection and due process. Plaintiffs also contend that the state regulations are more restrictive than parallel

provisions of the Social Security Act, under which plaintiffs claim they would be eligible for emergency relief. This conflict between state and federal provisions is said to violate the Supremacy Clause under the doctrine of King v. Smith, 392 U.S. 309 (1968), Townsend v. Swank, 404 U.S. 282 (1971), and Carleson v. Remillard, 406 U.S. 598 (1972). Declaratory and injunctive relief is sought by plaintiffs for themselves and their families and for all persons similarly situated. Jurisdiction is asserted to be based upon 28 U.S.C. §1343.

The defendant, Commissioner of the Vermont Department of Social Welfare, opposes plaintiffs' motion for class action determination, and has also moved to dismiss the complaint for lack of subject matter jurisdiction on the grounds that it fails to state a claim upon which relief can be granted.

Plaintiffs Lynch, Huntley and Young applied for preliminary relief ordering the Department of Social Welfare to grant them the emergency assistance which it had initially denied. The applications were granted with respect to Lynch and Huntley, and temporary restraining orders were issued on February 11, 1975, enjoining the Department from denying Lynch's application for \$156.00 in emergency aid, and on April 15, 1975 enjoining the Department from denying Huntley's request for \$50.00 in emergency aid. Young's application for a temporary restraining order was denied on



October 28, 1975 upon a finding that he and his family would not suffer irreparable harm in the absence of temporary relief.

Motions for summary judgment upon stipulated facts have been filed by both sides.

VERMONT'S EMERGENCY ASSISTANCE PROGRAM

Before proceeding to consider the issues presented in this case, it will be helpful first to examine the actual operation and framework of the Vermont ANFC-EA program. The so-called "Vermont State Plan" (Subj. No. 679, July 1, 1970) states the basic scope of the ANFC-EA program. The Plan was prepared by the Vermont Department of Social Welfare in order to comply with HEW requirements at 45 C.F.R. §233.120, which specify the conditions for receipt of federal matching funds to reimburse state emergency assistance expenditures. It initially sets forth a definition of emergency assistance which is virtually identical to that contained in the Social Security Act, 42 U.S.C. §606(e),<sup>7/</sup> as required by 45 C.F.R. §233.120 (b)(1). Under that definition, "emergency assistance" means aid provided during a period of thirty consecutive days once every twelve months to meet the needs of children who are living with specified "caretaker" relatives and are faced with destitution or are in need of living arrangements, provided the destitution or need for living arrangements were not caused by the refusal of the caretaker relative to work. The Plan then specifies: (1) the emergency needs which will be met,<sup>8/</sup> 45 C.F.R. §233.120(a)(3), (2) the emergency services

which will be provided, 45 C.F.R. § 233.120(a)(4), (3) that emergency needs will be "met promptly," 45 C.F.R. § 233.120(a)(5), and (4) that migrant workers with families will be included. 45 C.F.R. § 233.120(a)(2).

Most important for purposes of this suit, the Plan establishes "the eligibility conditions for receipt of emergency assistance," 45 C.F.R. § 233.120(a)(1), <sup>9/</sup> by reference to the "[e]ligibility conditions and methods of furnishing assistance . . . specified in the Family Services Policy Manual (sections 2600-2603)." Sections 2600-2603 of the Family Services Policy Manual, now referred to as the Welfare Assistance Manual (WAM), contain the eligibility provisions for the Vermont General Assistance Program. See, 33 V.S.A. § 3001 et seq. General Assistance (GA) is financial aid to needy persons who are ineligible to receive assistance under federal or federal-state "categorical" welfare programs.

By incorporating the GA eligibility provisions in the ANFC-EA program, the Department of Social Welfare has established two sets of eligibility criteria for ANFC families seeking emergency grants of aid. The family must first demonstrate that it falls within the eligibility group defined by the federal statute and regulations and the Vermont State Plan. Specifically, the family must demonstrate that it is "faced with destitution" or "in need of living arrangements" (not caused by a refusal to work), has not



received an emergency grant in the past twelve months, and includes dependent children and specified "caretaker" relatives. Second, the family must demonstrate that it is eligible for GA under the provisions of WAM §§ 2600-2603. The source of the dispute in this case is that WAM provisions, §§ 2600-2603, have the effect of denying emergency assistance to applicants who are able to satisfy the initial requirements but are unable to satisfy the GA eligibility criteria.

At the time plaintiffs applied for ANFC-EA, WAM § 2600(1) provided in part as follows:

Except as specifically provided in 2602 (exceptions) General Assistance shall be granted only for those applicants who:

1. Have received during the 30 day period immediately prior to application net income computed pursuant to General Assistance regulations which is below the applicable ANFC payment level . . . .

This provision, referred to as the "30-day rule" automatically disqualified every ANFC family applying for ANFC-EA (even those faced with destitution or in need of living arrangements) because the family's ANFC income during the past 30 days was equal to and therefore not "below the applicable ANFC payment level." The automatic disqualification established by the 30-day rule was final unless the ANFC applicant qualified for one of the exceptions set forth in WAM § 2602, which provided at the time plaintiffs applied for assistance:

### Exception

Eligibility criteria in section 2600 shall not be applied to any applicant who has exhausted all available income and resources and who has an emergency need:

1. Caused by the death of recipient or his legal dependent, a court-ordered eviction, or a natural disaster, such as flood, fire or hurricane; or
2. For medical care; or
3. If the applicant is applying for General Assistance for the first time since September 5, 1973; or
4. For heating fuel.

Since the commencement of this suit, the GA regulations have been amended by the Department of Social Welfare. The changes were prompted by recent amendments to the Vermont Statutes which restrict the availability of General Assistance. See, 33 V.S.A. § 3304 (as amended by S. 129, eff. Feb. 5, 1976). However, the new regulations, effective April 1, 1976, do not significantly alter the structure of Vermont's Emergency Assistance program. What was formerly WAM § 2600(1), the so-called "30-day rule", is still in full effect but has been redesignated WAM § 2600 (A)(1). The major changes applicable to eligibility for ANFC-EA are embodied in the amendments to WAM § 2602, which establishes a new list of exceptions to the 30day rule. The section, re-entitled "Catastrophic Situations", now provides:

Eligibility criteria in section 2600 shall not be applied to any applicant who has exhausted all available income and resources and who has an emergency need caused by one of the following catastrophic situations:



- a. Death of a spouse or minor dependent child; or
- b. A court ordered eviction; or
- c. A natural disaster such as flood, fire or hurricane; or
- c. [sic] An emergency medical need.

The major changes in § 2602 are the deletion of the so-called "one-time" exception, which formerly provided ANFC-EA to families who were applying for the first time since September 5, 1973, and the deletion of heating fuel as one of the emergency needs which may be met. Thus, the new regulations actually operate to restrict the availability of Emergency Assistance even further than those in effect when plaintiffs first applied and were denied.

#### FACTS

1. Donna Lynch. Donna Lynch lives in Burlington, Vermont, with her three year old son. She has been a regular recipient of ANFC since March, 1973 and also receives disability benefits under the Supplemental Security Income (SSI) Program. Her total income is approximately \$305 per month, and she has no other source of income.

In early February, 1975, Lynch received and cashed her ANFC check in the amount of \$61.00 and her SSI check in the amount of \$202.00. On February 3, the cash proceeds of these two checks (except for \$30.00 which had already been spent) was stolen from Lynch's purse. Police investigation failed to recover the stolen money. Left without funds as

a result of the theft, Lynch applied to the Burlington office of the Welfare Department on February 5 for emergency assistance to meet her immediate cash needs to pay for food, rent, and utilities for herself and her child. Her next ANFC payment in the amount of \$42.00 was not due to arrive until February 16. In the meantime, she had no resources to meet her basic needs. Lynch's application for emergency assistance was denied on the basis of WAM §§2600-2603, since she had received regular ANFC payments during the 30 days prior to her application and did not qualify for a §2602 exception.

2. Gail Huntley. Gail Huntley lives in St. Albans, Vermont, with her two year old child. Her only source of income is an ANFC grant of \$159 on the first of each month and \$98 on the sixteenth. On April 1, 1975 Huntley and her child moved into a new apartment after the water supply in their old apartment failed. Huntley used all but \$13 of the ANFC check she had received on April 1 to pay part of the first month's rent on the new apartment, to purchase food and to take care of several other minor expenses. These expenses left her without funds to pay a \$50 deposit required by the local utility company before electric services would be provided to the new apartment. On April 2, Huntley applied for emergency assistance to help pay for the utility deposit. She had no other means to pay the deposit, and her next ANFC grant was not due until April 16. Huntley had received an



ANFC-EA grant of \$17 during the 12 months prior to her application. She too was denied emergency assistance since she had received an ANFC payment in the previous 30 days and did not qualify for any of the exceptions.

3. Ruthann Bigelow. Ruthann Bigelow resides in Huntington, Vermont, with her two children, ages 2 and 6. On July 16, 1974, she received her regular mid-month ANFC check in the amount of \$134. She spent \$34 from the proceeds of the check to pay gas, light and phone bills. The remaining \$100 was spent shortly thereafter to purchase bunk beds needed for her children. These expenditures left Bigelow without money for food, and she applied for emergency assistance to the Welfare Department on July 22, 1974. Bigelow had received "in-kind" emergency assistance for food in the amount of \$5.76 during the 12 months prior to July 22. Her application was denied on the basis of the same regulations which lead to the denials of Lynch and Huntley.

4. Leland Young.<sup>10/</sup> Leland Young lives in St. Johnsbury, Vermont, with his wife and three children under three years of age. He is a regular recipient of ANFC in the amount of \$401 per month. On September 26, 1975 his refrigerator broke down beyond repair. Young did not have funds available at that time to purchase a replacement refrigerator, since he needed his ANFC grants for on-going expenses and was unable to obtain a commercial loan.

Young applied for an EA grant on September 30, 1975. He had not received an emergency grant during the 12 months prior to application, but he had, like his co-plaintiffs, applied for and received GA since September 5, 1973, making him ineligible for the "one-time" exception in WAM § 2602(3). Being ineligible for any of the other exceptions, Young's application was denied, and his administrative appeal of the denial was affirmed by the Commissioner of the Department of Social Welfare on October 27, 1975.

#### JURISDICTION

Although plaintiffs have raised both statutory and constitutional claims, the power of the federal courts to decide this case one way or the other depends entirely on the substantiality of the constitutional claims.<sup>11/</sup> Hagans v. Lavine, 415 U.S. 528, 534-539 (1974). Under Hagans, claims alleging deprivation of constitutional rights must not be dismissed unless they are "obviously without merit" or foreclosed by prior judicial decision. Ibid.; Andrews v. Maher, \_\_\_\_\_ F.2d \_\_\_\_\_, No. 75-7029 (2d Cir., Oct. 24, 1975) Slip op. 293-296. In light of Hagans, the Court cannot say that the equal protection claim raised in plaintiffs' complaint is insubstantial for purposes of federal jurisdiction.

Plaintiffs contend that Vermont's ANFC-EA regulations differentiate between applicants who are equally



destitute on the basis of the type or cause of destitution. In essence, plaintiffs say that the exceptions established by WAM §2602 create two classes of families with emergency needs: those which fit within an exception and those which do not. The defendant contends that the sole basis for differentiation in the EA regulations is the level of the applicant's income during the preceding 30 days, not the cause or type of financial crisis. The Court agrees with the plaintiffs.

The facts of this case illustrate the actual operation of the ANFC-EA regulations and the distinctions which they tend to create. All four plaintiffs were representatives of ANFC families which had exhausted available income and resources and were faced with emergency needs. They were summarily denied emergency relief because they had received ANFC payments in the past 30 days and failed to fall within one of the four classes of exceptions established by WAM §2602. Those exceptions focus on types and causes of emergencies, and it is fair to say that plaintiffs might not have been summarily denied emergency relief if their financial crises had arisen in slightly different manners. For example, plaintiff Lynch would not have been rendered ineligible under the 30-day rule of WAM § 2600 if her money had been lost as the result of a natural disaster, rather than a theft; plaintiff Huntley would not have been rendered ineligible if her

cash needs to pay a utility deposit had been caused by a court-ordered eviction rather than the failure of the water supply in her old apartment; plaintiff Bigelow would not have been made ineligible by the 30day rule if her cash needs to purchase a set of beds for her children had been caused by fire rather than the removal of borrowed beds by her landlord; and plaintiff Young might have qualified for an emergency grant to purchase a new refrigerator if the old one had been swept away in a flood and had not simply ceased to function. In addition to these distinctions, based upon the cause of the applicants' emergency needs, the §2602 exceptions also distinguished between those applicants, such as plaintiffs, who had applied for GA on a prior occasion since September 6, 1973, and those who had not.

Consideration of the reasonableness of the distinctions and categories established by the §2602 exceptions is not foreclosed by prior judicial decision. On the contrary, similar categories established in the Connecticut emergency assistance were held by a neighboring district court to violate the rights of welfare applicants to equal protection. Burrell v. Norton, 381 F. Supp. 339 (D. Conn. 1974.<sup>12/</sup> Also, the substantiality of similar equal protection claims had been upheld for jurisdictional purposes in recent federal decisions. Mandley v. Trainor, 523 F.2d 415 (7th Cir. 1975); Williams v. Wohlgemuth, 400 F. Supp.



1309 (E.D. Pa. 1975).<sup>13/</sup> In light of the apparent purpose of the emergency assistance program--to provide relief to families suddenly faced with destitution--the reasonableness of regulations which distinguish among different "types" of destitution may be seriously doubted. The Court therefore cannot say that plaintiffs' claims of arbitrary and unreasonable legislative discrimination are "obviously without merit" under Hagans. The claims would certainly be worthy of consideration by a three-judge court if the pendent statutory claim is first rejected here. The Court holds that jurisdiction is properly based upon 28 U.S.C. §1343(3).

#### CLASS ACTION

Plaintiffs have moved pursuant to Rule 23(c)(1) for a determination that they may maintain this action as representatives of a class composed of all applicants for EA who meet the eligibility criteria established by federal law but are denied EA by operation of the state eligibility provisions challenged in this case. The motion may not be granted unless plaintiffs establish that the proposed class satisfies the prerequisites of Rule 23(a), including the requirement that "the class is so numerous that joinder of all members is impracticable." Glodgett v. Betit, 368 F. Supp. 211, 214 (D. Vt. 1973), aff'd, Philbrook v. Glodgett, 421 U.S. 707 (1975). Plaintiffs have attempted to satisfy the latter requirement by asserting in their memorandum of

law that there are a large number of ANFC families in Vermont, that the state provides only 80 percent of the subsistence needs of these families, and that many of the families are bound to be faced with financial crises which would render them eligible for EA under federal provisions were it not for the more restrictive state provisions. These assertions, however, are not sufficient under Rule 23. What is lacking is any evidence showing the actual existence of ANFC families other than plaintiffs who have been faced with emergency needs, applied for state aid, and been denied under the challenged regulations. In the absence of such proof, the Court is not permitted to speculate that the number of such families is great or that the task of joining them in this suit would be impracticable. Demarco v. Edens, 390 F.2d 836, 845 (2d Cir. 1968); Baxter v. Minter, 378 F. Supp. 1213, 1215-1216 (D. Mass. 1974).

Furthermore, there is no practical reason for this matter to proceed as a class action. If this Court finds the state regulations to be invalid under the Supremacy Clause, all individuals situated similarly to the plaintiffs would receive the benefits of the Court's decision, since it may be assumed that the defendant would not disobey an injunction against further enforcement of the regulations, see, Bailey v. Patterson, 323 F.2d 201, 207 (5th Cir. 1963), and since plaintiffs do not seek monetary restitution. Galvan v. Levine, 490 F.2d 1255, 1261 (2d Cir. 1973), cert. denied,



417 U.S. 936 (1974). Accordingly, plaintiffs' motion to maintain this suit as representatives of a class is denied.

MOTIONS TO DISMISS CLAIMS OF HUNTLEY AND BIGELOW

It is stipulated that plaintiffs Huntley and Bigelow both applied for and received grants of emergency assistance during the twelve months prior to the time of the EA applications and denials which are the basis for their involvement in this suit. Arguing that Huntley and Bigelow could not receive ANFC-EA more than once in a twelve month period under state and federal regulations even if successful in this suit,<sup>14/</sup> the defendant has moved to dismiss as to them for failure to state claims upon which relief can be granted.

The Court agrees that the status of Huntley and Bigelow as plaintiffs in this case is questionable, for the reason stated by defendants. Though it is arguable that Huntley and Bigelow would be entitled to declaratory and injunctive relief from the challenged regulations if successful on the merits of their claims, that argument raises difficult questions regarding plaintiffs' standing as litigants with cognizable "stakes in the outcome." The Court sees no necessity to determine these questions since the identical claims of plaintiffs Young and Lynch will be preserved and decided, whether or not Huntley and Bigelow remain in the suit. For that reason and also because none of the parties will gain or lose by Huntley and Bigelow's continued presence as parties, the Court makes no

determination of defendant's motion to dismiss as to them.

#### STATUTORY CLAIM

The core of plaintiffs' statutory argument is that WAM §§ 2600-2603 impermissibly restricts the eligibility conditions established by the Social Security Act for receipt of emergency assistance. The argument has two parts. First, plaintiffs say the state regulations operate to disqualify applicants who fall within the federal definition of eligibility in 42 U.S.C. § 606(e); second, the regulations, by restricting eligibility more narrowly than the federal provisions, violate the mandate of 42 U.S.C. §602(a)(10), which requires the states to furnish assistance " . . . with reasonable promptness to all eligible individuals (emphasis supplied)." King v. Smith, 392 U.S. 309 (1968).

The Court fully agrees with plaintiffs' argument and holds that Vermont's Emergency Assistance Plan conflicts with the Social Security Act by limiting the eligibility of applicants who fall within § 606(e) to only those exceptional situations listed in WAM § 2602. In reaching this conclusion, the Court was aided by the thoughtful analysis in two recent opinions reaching similar conclusions. Mandley v. Trainor, 523 F.2d 415 (7th Cir. 1975); Williams v. Wohlgemuth, 400 F. Supp. 1309 (E.D. Pa. 1975).<sup>15/</sup> There being no contrary<sup>16/</sup> authority on this point, the Court adopts the reasoning of Mandley and Williams, where appropriate, for purposes of this opinion.



The Social Security Act, 42 U.S.C. § 606(e), defines the following eligibility group for purposes of emergency assistance: (1) needy children (2) living in the homes of specified relatives (3) who are without available resources and (4) are in need of payments, care, or services to avoid destitution, or (5) to provide living arrangements in the home for children, provided (6) the destitution or need for living arrangements did not arise because the child or relative refused without good cause to accept employment or training for employment. As explained earlier in this opinion, the Vermont eligibility provisions of WAM §§ 2600-2603 which were in effect at the time plaintiffs were denied assistance added several requirements to those contained in §606(e). Specifically, unless an applicant family could show that it had not received ANFC payments during the 30 days prior to application or had received net income less than the applicable ANFC payment,<sup>17/</sup> the family was required to show either that its emergency needs were for medical care or heating fuel, or that its needs were caused by death, eviction, or natural disaster, or that they had not applied for General Assistance since September 5, 1973. Applicants such as plaintiffs, who fell within the federal eligibility definition, yet failed to meet Vermont's additional requirements, were denied assistance. It is therefore apparent that the regulations applied to plaintiffs were more restrictive than their federal counterparts, and the

amended regulations, effective April 1, are even more restrictive. The question then is whether the regulations are lawful. The Court holds that they are not.

There is no doubt that Vermont's participation in the EA program is optional; it could decide to have no EA program at all. Also, having chosen to participate in the cooperative program, Vermont retains "considerable latitude in allocating [its] AFDC resources, since each state is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program." King v. Smith, 392 U.S. 309, 318-319 (1968). However, Vermont cannot elect to participate in the federal program for purposes of receiving matching funds and yet administer the program in accordance with whatever categorical eligibility standards it prefers. On the contrary:

[A]t least in the absence of congressional authorization for the exclusion clearly evidenced from the Social Security Act or its legislative history, a state eligibility standard that excludes persons eligible for assistance under Federal AFDC standards violates the Social Security Act and is therefore invalid under the Supremacy Clause. Townsend v. Swank, 404 U.S. 282, 286 (1971).

The rule has been restated on numerous occasions:

. . . once the federal standard of eligibility is defined, a participating state may not deny aid to persons who come within it in the absence of clear indication that Congress meant the coverage to be optional. Burns v. Alcala, 420 U.S. 575, 580 (1975); See also, Philbrook v. Glodgett, 421 U.S. 707, 719 (1975); New York Dept. of Social Services v. Dublino, 413 U.S. 405, 421-422 (1973); Carleson v. Remillard, 406 U.S. 598 (1972); King, supra.



There is no reason why a different rule of construction should be applied to the Emergency Assistance Program, since its provisions are merely component parts of the AFDC chapter of the Social Security Act. See Mandley, supra at 422. Vermont's EA program is therefore bound to conform to federal standards unless Congress intended those standards to be optional.

There is no indication from any source that Congress intended the broad coverage of §606(e) to be optional to the states. Mandley, supra at 420-21; Wohlgemuth, supra at 1318-19. On the contrary, Congressional reports indicate an intent to make emergency assistance available whenever a family with minor children is "without available resources and the payments or service [are] needed to meet an immediate need that would not otherwise be met", 1967 U.S. Code Cong. & Adm. News 2838, 3002, and the family has not refused unjustifiably to work. There is no support for the position that Vermont can limit the provision of EA to certain types or categories of emergency situations. Mandley, supra at 422; Wohlgemuth, supra at 1321. HEW regulations which authorize the states to specify the eligibility conditions imposed for the receipt of "emergency assistance", 45 C.F.R. § 233.120(a)(1), refer, in the Court's opinion, only to the setting of standards of need and do not supersede other HEW regulations which permit the States to "[p]rovide more limited public assistance coverage than that

provided by the Act only where the Social Security Act or its legislative history authorizes more limited coverage." 45 C.F.R. § 233.10(a)(1)(ii)(A).

Accordingly, Vermont must provide ANFC-EA, if it continues to do so at all, to all applicants who fall within the eligibility group set by 42 U.S.C. § 606(e). The state cannot further its fiscal goals or social policies by restricting the class of eligible children defined by the Social Security Act. Townsend v. Swank, 404 U.S. 282 (1971); Wohlgemuth, supra at 1321. Those goals must be pursued through the state's "undisputed power to set the level of benefits." King v. Smith, 392 U.S. 309, 334 (1968).

In accordance with the foregoing opinion, it is ORDERED that:

1. Sections 2600 and 2602 of the Welfare Assistance Manual of the Vermont Department of Social Welfare are hereby declared to be invalid under the Supremacy Clause of the United States Constitution insofar as those regulations operate to prohibit federally subsidized grants of Emergency Assistance to applicants who fall within the eligibility group defined by 42 U.S.C. § 606(d) but are not faced with one of the catastrophic situations listed in Section 2602 of the Welfare Assistance Manual.

2. The defendant, Paul R. Philbrook, his successors in office, his agents, employees, delegates, and other persons acting in concert and participating with them, are hereby



enjoined from enforcing and implemetning Sections 2600 and 2602 of the Welfare Assistance Manual of the Vermont Department of Social Welfare insofar as those regulations operate to prohibit federally subsidized grants of emergency assistance to applicants who fall within the eligibility group defined by 42 U.S.C. § 606(e) but are not faced with one of the catastrophic situations listed in Section 2602 of the Welfare Assistance Manual.

3. Plaintiffs are remanded to the Department of Social Welfare for consideration of their separate applications for emergency assistance in light of this opinion and with reference to their present circumstances.

Dated at Burlington in the District of Vermont,  
this 2nd day of June, 1976.

s/ Albert W. Coffrin  
Di strict Judge



#### FOOTNOTES

1/ The basic framework of the ANFC-EA program, as explained below, is established by the Vermont State Plan (Subj. No. 679, July 1, 1970), and the eligibility provisions which are the subject of this lawsuit are contained in the Vermont Welfare Assistance Manual §§ 2600-2603.

2/ Pub. L. No. 90-248, §206, 81 Stat. 821, 893, 42 U.S.C. §§ 603(a)(5), and 606(3).

The definition of "emergency assistance" under 42 U.S.C. § 606(e) is as follows:

(e)(1) The term "emergency assistance to needy families with children" means any of the following, furnished for a period not in excess of 30 days in any 12-month period, in the case of a needy child under the age of 21 who is (or within such period as may be specified by the Secretary, has been) living with any of the relatives specified in subsection (a) (1) of this section in a place of residence maintained by one or more of such relatives as his or their own home, but only where such child is without available resources, the payments, care, or services involved are necessary to avoid destitution of such child or to provide living arrangements in a home for such child, and such destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment--

(A) money payments, payments in kind, or such other payments as the State agency may specify with respect to, or medical care or any other type of remedial care recognized under State law on behalf of, such child or any other member of the household in which he is living, and

(B) such services as may be specified by the Secretary; but only with respect to a State whose State plan approved under section 602 of this title includes provision for such assistance.

3/ S. Rep. No. 744, 90th Cong., 1st Sess. 165 (1967), 1967 U.S. Code Cong. & Adm. News 2838. See generally, Note, "Meeting Short-term Needs of Poor Families: Emergency Assistance for Needy Families with Children; 60 Corn. L. Rev. 879 (1975).

4/ Vermont State Plan (Sub. No. 679, July 1, 1970).



5/ 42 U.S.C. § 603(a)(5) provides as follows:

(a) From the sums appropriated therefor, the Secretary of the Treasury shall (subject to section 1320b of this title) pay to each State which has an approved plan for aid and services to needy families with children, for each quarter, beginning with the quarter commencing October 1, 1958--

(b) in the case of any State, an amount equal to 50 percentum of the total amount expended under the State plan during such quarter as emergency assistance to needy families with children.

6/ The conditions of federal financial participation in a state ANFC-EA program are set forth by the Department of Health, Education, and Welfare, 45 C.F.R. § 233.120 and are discussed later in this opinion.

7/ See note 2, supra.

8/ The Plan states that the following emergency needs will be met: food, clothing, personal needs and shelter, fuel and utilities, household furnishings, transportation, and medical care.

9/ 45 C.F.R. § 233.120(a)(1) permits the States to set eligibility conditions for EA which are "more liberal" than those for AFDC. Accordingly, the States may decide to grant EA to families that would not ordinarily be eligible for welfare assistance.

10/ The facts pertinent to Leland Young were not included in the Stipulation of Agreed Facts, filed by the parties on September 26, 1975, since Mr. Young was not added as an intervening plaintiff until his motion to intervene was granted on October 20, 1975. However, in ruling upon Young's application for a TRO, the Court had occasion to find the facts pertinent to his case and included those findings of fact in its opinion and order dated October 29, 1975.

11/ Although plaintiffs have requested the convening of a three-judge court to decide the constitutional claims pursuant to 28 U.S.C. § 2281, a single district judge may alone decide the threshold jurisdictional question. Hagans v. Lavine, 415 U.S. 528, 543-545 (1974). If jurisdiction is upheld, based upon the substantiality of the constitutional claim, the district judge must then go on to dispose of the pendent statutory claim on its merits. Ibid. Only if the pendent claim is rejected is a three-judge court required to be convened to dispose of the constitutional claim. Ibid; See also, Mandley v. Trainor, 523 F.2d 415 (7th Cir. 1975).



12/ The Connecticut EA regulations expressly limited the provision of emergency aid to situations where "a catastrophic event or an eviction" had occurred. Burrell, supra at 341. Although the exceptions contained in the Vermont EA regulations, WAM §2602, provide for emergency aid in a wider variety of circumstances, the effect of the Vermont regulations is very similar to that of the Connecticut regulations. Specifically, both regulatory schemes define only certain types of crises which form the basis for emergency aid.

13/ Mandley involved an attack upon Illinois EA regulations which limited the provision of emergency assistance to AFDC families only and to four types of "crisis situations." The regulations were held to be more restrictive than the applicable provisions of the Social Security Act and, for that reason, invalid. In Wohlgemuth, plaintiffs attacked provisions of the Pennsylvania EA program which limited the provisions of emergency assistance to needs arising from civil disorders and natural disasters. Those regulations were also invalidated as being more restrictive than the federal provisions.

14/ 45 C.F.R. § 233.120 provides in part:

(3) Federal matching is available only for emergency assistance which the State authorizes during one period of 30 consecutive days in any 12 consecutive months . . . (emphasis added).

The Vermont State Plan (Subj. No. 679, July 1, 1970) provides in part:

The Vermont Department of Social Welfare claims federal matching for emergency assistance which is authorized during one period of 30 consecutive days . . . in any 12 consecutive months (emphasis added).

15/ See note 14, supra.

16/ Baxter v. Minter, 378 F. Sup. 1213 (D. Mass. 1974) is not on point, as argued by defendant. Baxter involved a challenge to provisions of the Massachusetts EA program, which categorically excluded all applicants who were not receiving or eligible to receive AFDC or General Relief (GR). Unlike the Vermont program, the Massachusetts program did not include exceptions based upon the cause or type of emergency situation faced by applicants. Rather, the limitations in the Massachusetts program focused exclusively on need. Applicants who were not "needy" enough to qualify for AFDC or GR at the time of application for EA were



considered ineligible for EA. The District Court of Massachusetts held that those limitations were within the State's power to set standards of need.

17/ It should be noted that a family in Vermont which had been living for 30 days on less than the applicable ANFC payment, which amounts in any case to only 80 percent of the family's basic needs, would probably have been living on the fringes of destitution throughout that period.